

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RENEE I. BRYANT)	
Claimant)	
)	
VS.)	Docket No. 1,027,005
)	
RAYTHEON AIRCRAFT CREDIT CORP.)	
Self-Insured Respondent)	

ORDER

Respondent requests review of the June 7, 2006 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge (ALJ) ordered temporary total disability to be paid from January 4, 2006 to March 8, 2006, ordered the respondent to provide the names of 3 physicians for the claimant to select for treatment for her back and foot injuries, and ordered that the outstanding medical in claimant's exhibit no. 3 be paid as authorized and the medical expense of Dr. Michael Munhall be paid as unauthorized.

The ALJ came to this decision based on the opinion of Dr. Paul Stein who was appointed to perform an IME and opined "[t]he work related injury is an aggravation of a left heel spur with plantar fasciitis [sic] and aggravation of lumbar degenerative disc disease by virtue of a mechanically altered gait."¹

The respondent requests review of this decision, alleging that neither claimant's underlying medical conditions, nor the treatment for those conditions and her resulting complications are attributable to her work activities. Thus, respondent should not be held responsible for claimant's medical treatment or temporary total disability benefits and the ALJ's preliminary hearing Order should be reversed.

¹ ALJ Order (June 7, 2006).

Claimant contends that while her plantar fasciitis may be unrelated to work, the treatment for that condition required her to utilize a CAM walker which, according to Dr. Stein, gave rise to an altered gait, aggravating both her foot complaints and a pre-existing degenerative condition in her low back. Because these complaints represent an aggravation, they are recognized as a compensable injury under Kansas law. Thus, the ALJ's preliminary hearing Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The underlying facts in this claim are undisputed. Since 1998 claimant has been a sheet metal assembler and is required to repetitively sit, stoop and stand on a concrete floor, all the while using her upper extremities during each 8 hour shift.

In October 2004, claimant first began to notice pain in her left foot. She continued working, and in December 2005 her symptoms returned and claimant sought further treatment. She was diagnosed with left plantar heel spur and posterior heel spur causing plantar fasciitis. Claimant was given a CAM walker along with medications and was directed to wear the CAM walker while working.² Over time, as claimant was wearing the CAM walker, a boot that immobilizes the foot, she developed an altered gait and began to experience low back and left leg pain along with her left foot complaints. She sought treatment on her own from Dr. Michael Munhall, who opined that claimant "developed low back and left leg pain provoked by weightbearing employment at Raytheon Aircraft Company while wearing a CAM walker for orthopedic treatment of chronic left plantar fasciitis."³

When respondent refused to provide medical treatment or temporary total disability benefits, a preliminary hearing was scheduled and an independent medical examination was ordered. Dr. Paul Stein was ordered to perform an examination and speak to the causal connection between claimant's present condition and her work-related activities. According to Dr. Stein -

Ms. Bryant had left foot pain secondary to a bone spur on the left heel. I doubt whether this was caused by her work activity. Much of her work activity was done on concrete flooring and it involved a fair amount of standing. Such activity may reasonably be assumed, within a reasonable degree of medical probability, to have aggravated this condition. The gait abnormality engendered by the foot problem,

² P.H. Trans. Cl. Ex. 1 at 1.

³ *Id.*

particularly the wearing of a Cam Walker, likely aggravated the preexisting degenerative disk disease in the lumbar spine.⁴

The ALJ noted Dr. Stein's opinion and granted claimant's request for benefits. After considering the parties' arguments and the record as a whole, the Board affirms the ALJ's findings. It is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.⁵ The test is not whether the job-related activity or injury caused the condition but whether the job-related activity or injury aggravated or accelerated the condition.

This case illustrates this principle. No physician has testified that claimant's plantar fasciitis was *caused* by work. However, during the course of her treatment, which required her to wear a CAM walker while working, the plantar fasciitis and her degenerative back condition were aggravated by her work activities. Accordingly, she is entitled to benefits under the Act. The ALJ's preliminary hearing is, therefore, affirmed.

As provided by the Workers Compensation Act, preliminary hearing findings are not final, but subject to modification upon a full hearing on the claim.⁶

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated June 7, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of August, 2006.

BOARD MEMBER

c: Joni J. Franklin, Attorney for Claimant
Timothy A. Emerson, Attorney for Respondent and its Insurance Carrier

⁴ *Id.*, Cl. Ex. 2 at 42 (Dr. Stein's IME report, dated Apr. 28, 2006 at 5).

⁵ *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984); *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

⁶ K.S.A. 44-534a(a)(2).